

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4004 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MATHURDAS MANGALDAS SINCE DECEASED THROUGH HIS HEIRS

Versus

A'BAD MUNICIPAL CORPORATION

Appearance:

MR KD GANDHI for Mr KS NANAVATI for Petitioners

MR BP TANNA for Respondent No. 1

MR VM PANCHOLI, AGP, for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/06/1999

ORAL JUDGEMENT

The petitioner was owner of the land bearing

survey no.118 admeasuring 27467 sq.yards in Gulbai Tekra area of Ahmedabad city. In Town Planning Scheme No.20 (Gulbai Tekra) the aforesaid land was covered and out of the said land, the land admeasuring 21960 sq. yards was constituted as Final Plot No.314 and was allotted to the petitioner. However, possession of the entire final plot was not handed over to the petitioner and only possession of the land admeasuring 18,590 sq. yards was given to the petitioner. Hence, though Final Plot No.314 admeasuring 21,960 sq. yards vested in the petitioner under the Town Planning Scheme which became final, possession of land admeasuring 3,370 sq. yards was not given to the petitioner.

2 Although said Town Planning Scheme was sanctioned by the Government as far back as on 27th May 1966, the petitioner was not given possession of the land admeasuring 3,370 sq. yards in spite of various representations and reminders sent by the petitioner to the respondents to implement the Town Planning Scheme. It appears that on the said land admeasuring 3370 sq. yards number of slums and temporary structures had come up. Hence the petitioner filed the present petition with the following main prayers:-

- (1) Respondent-Ahmedabad Municipal Corporation and State of Gujarat be directed to summarily evict the persons unauthorisedly occupying Final Plot NO.314 and remove slums and temporary structures on the plot and vicinity of the said plot and to direct the respondents to hand over the vacant and peaceful possession of the plot in question to the petitioner.
- (2) To direct the respondents to implement the Town Planning Scheme No.20 (Gulbai Tekra) by developing plots reserved for public purposes and providing amenities as envisaged by the final scheme.

At the hearing of this petition, Mr K.D. Gandhi, learned counsel for the petitioner, has stated that the petitioner does not press Prayer (B) and that petition may be confined to Prayer (A) only.

3 It appears that on an earlier occasion this Court had suggested to the respondents to either evict the unauthorised occupants on the land admeasuring 3370 sq. yards from out of Final Plot No.314 and to handover the vacant and peaceful possession of the land to the petitioner or to give the petitioner any other

alternative land or to give the compensation for the land in question. Mr B.P. Tanna, learned counsel for the respondent-corporation, has stated that the suggestion was considered by the respondent-corporation and since on the land in question admeasuring 3370 sq. yards slums had already come up prior to 1976 and since the Corporation had adopted the policy of regularising such unauthorised slums which had come up prior to 1976, it would not possible to evict the occupants on the land in question. It was also not possible for the Corporation to give another land to the petitioner. Hence, the only alternative available to the respondent-corporation is to reserve the land admeasuring 3370 sq. yards and the other appurtenant land occupied by the hutment dwellers and to reserve the same in the town planning scheme for upgradation by making variation in the scheme and to pay the petitioner compensation for the said land admeasuring 3370 sq. yards. According to the learned counsel for the respondent-corporation, the compensation would have to be decided by the Town Planning Officer.

4 Mr K.D.Gandhi, learned counsel for the petitioner, has submitted that in law the respondent - corporation is bound to evict the unauthorised occupants but the petitioner would agree to accept the compensation in lieu of the land provided the compensation is paid on the basis of the market value as on today.

5 Mr B.P. Tanna, learned counsel for the respondent - corporation, however, does not agree to the aforesaid rider and submits that it is for the Town Planning Officer to decide as to what on what basis and principle the compensation is to be determined.

6 Having heard the learned counsel for the parties, it appears to the Court that in the facts and circumstances of the case, the stand adopted by the petitioner appears to be quite reasonable and in consonance with the provisions of the Town Planning Act and the Land Acquisition Act. The Town Planning Scheme was sanctioned by the State Government as far back in the year 1966. Hence, the entire land bearing Final Plot No.314 admeasuring 21,960 sq. yards was vested in the petitioner and the petitioner was entitled to get the vacant and peaceful possession of the entire land. However, the petitioner was given the possession of only 18,590 sq. yards of land with the result that petitioner could neither possess nor make use of the land admeasuring 3370 sq. yards of land for all these years. Had the land been made available to the petitioner, the petitioner would have been in a position to utilise the

said land and also could have sold the land for the market price as of now. In this view of the matter, it would be just and proper to allow this petition with a direction to the respondents to pay the petitioner compensation for the land admeasuring 3370 sq. yards of out of the land bearing Final plot No.314 in Town Planning Scheme No.20 (Gulbai Tekra) by determining the compensation in accordance with law and on the basis of the market value of the land as of now. The quantification of the compensation will obviously have to be done by the Town Planning Officer in light of the aforesaid directions.

7 The petition is accordingly allowed. Rule is made absolute. Respondents are directed to pay the petitioner the compensation for the land admeasuring 3370 sq. yards out of the land bearing Final plot No.314 in Town Planning Scheme No.20 (Gulbai Tekra) by determining the compensation in accordance with law and on the basis of the market value of the land as of now. There shall be no order as to costs.

(mohd)